

STATE OF MICHIGAN
COURT OF APPEALS

In re K. BUTLER, Minor.

UNPUBLISHED
May 10, 2016

No. 329495
Eaton Circuit Court
Family Division
LC No. 14-019046-NA

Before: HOEKSTRA, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent-mother, A. Rogers, appeals as of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(i), (j), (k)(iii), and (m). We affirm.

I. FACTUAL BACKGROUND

In 2008, Rogers released her parental rights to two of her minor children during child protective proceedings. After the petition was filed in this case involving her third child, Rogers admitted that in 2014 she twice committed retail fraud and the child was present during one incident. In September 2014, Rogers and her boyfriend committed unarmed robbery in a grocery store parking lot while the child was present in the car. During a police interview, Rogers admitted to using heroin every day, crack cocaine multiple times a week, and marijuana. Lisa Underhill, a Children's Protective Services (CPS) investigator, discovered that Rogers's home was filthy and the child was sleeping on a dirty loveseat with dirty blankets.

The Department of Health and Human Services (DHHS) petitioned to remove the child from Rogers's care. The Department petitioned for immediate termination of Rogers's parental rights and requested suspended parenting time. The trial court suspended Rogers's parenting time, but ordered the Department to make reasonable efforts to reunify the family. In July 2015, the Department presented a one-page service agreement that provided for probation terms and substance abuse prevention. The hearing referee stated that the Department did not need to make further efforts because it was requesting termination at the initial disposition.

The trial court held a termination hearing on September 21, 2015. At the hearing, Krissa Blankenburg, Rogers's probation agent, testified that Rogers consistently tested positive for marijuana in levels that increased and decreased. Rogers also tested positive for opiates while on probation, and her next probation violation could result in prison time. Underhill testified that Rogers's probation terms, which she was not complying with, were similar to the services the Department would have offered.

Rogers testified that she had made mistakes but was attempting to better her life. According to Rogers, she wanted the child to stay with his father because he was healthy and happy, but she wanted to become part of the child's life at some point in the future. Rogers also testified that she wanted the opportunity to take advantage of services. The child's father testified that the child lived with him and that he did not discuss Rogers with the child. The child's father stated that the child, who now attended school and was toilet trained, would "scream hysterically" and was upset about the possibility of being returned to Rogers.

Rogers's counsel did not contest that there was sufficient evidence supporting the statutory grounds for termination, but instead argued that termination was not in the child's best interests. The trial court found that Rogers continued to have serious substance abuse issues, which led to her other problems, including the deplorable conditions of her home. Regarding the child's best interests, the trial court found that the child was not bonded with Rogers, Rogers had poor parenting ability, and it was unlikely that she would be able to provide a stable home for the child in the future. The trial court found that the child's placement with a relative generally weighed against termination, but that the instability of Rogers's own home and life rendered that factor neutral. It concluded that it was in the child's best interests to terminate Rogers's parental rights.

II. STATUTORY GROUNDS

Rogers contends that the trial court's failure to offer her services and parenting time rendered it without sufficient evidence to support the statutory grounds for termination. We disagree.

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error whether a trial court engaged in reasonable efforts to reunify a child with his or her parent. *Id.* The trial court clearly errs when, after reviewing the record, we are definitely and firmly convinced that it made a mistake. *Id.*

The trial court must make reasonable efforts to reunify a child with his or her family unless aggravating circumstances are present. MCL 712A.19a(2). The Department is obligated to make reasonable efforts to reunite even an incarcerated parent with his or her child. *Mason*, 486 at 152. The purpose of a case service plan is to facilitate returning children to their parents. *Id.* at 156. Failure to provide services may prevent the trial court from having sufficient evidence to terminate a parent's parental rights. *Id.* at 166; *In re Rood*, 483 Mich 73, 113-114; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.).

However, the Department need not provide services to every family in every situation. See MCL 712A.18f(1)(b); *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "Services need not be provided where reunification is not intended." *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008). Similarly, unless parenting time would be harmful to the child, the parent shall have parenting time no less than once every seven days. MCL 712A.18f(3)(e). But "[t]he suspension of parenting time once a petition to terminate parental rights is filed requires no finding of harm and is presumptively in the child's best interest" because of the drastic

measures a parent facing termination might be tempted to undertake. *In re Laster*, 303 Mich App 485, 489; 845 NW2d 540 (2013).

In this case, the Department sought termination at the initial dispositional hearing. The Department was not required to offer services or parenting time. When the trial court ordered reunification services, the Department provided a service plan that addressed Rogers's main deficiency in this case—substance abuse. The Department presented evidence at trial that Rogers did not take full advantage of those services. We are not convinced that the trial court made a mistake when it found that statutory grounds supported terminating Rogers's parental rights despite the cursory offer of services.

Additionally, we note that Rogers received substance abuse services through her probation officer and did not benefit from those services. “[T]here exists a commensurate responsibility on the part of [parents] to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Rogers has not demonstrated that the results of her case would have been different had the Department—located several counties away from what was then Rogers's residence—rather than Rogers's local probation officer, provided her services. We conclude that Rogers has not demonstrated that any failing of the Department in this regard prejudiced her.

III. BEST INTERESTS

Rogers also contends that the trial court erred when it found that terminating her parental rights was in the child's best interests. We disagree.

The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). We review for clear error the trial court's determination regarding the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include “the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.” *Olive/Metts*, 297 Mich App at 41-42. The trial court may also consider “a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption.” *White*, 303 Mich App at 714.

In this case, the trial court considered a variety of factors when determining the child's best interests. Specifically, it found that Rogers and the child lacked a bond. The child's father testified that the child did not want to be returned to her care and found the idea traumatic, which supported this finding. It also considered Rogers's parenting abilities, as shown by the deplorable conditions the child lived in while in her care and her decisions to continue to engage in drug use and criminality, and Rogers's instability and its effects on the child's needs for a permanent home. Again, the record evidence supported its findings. Finally, the trial court

appropriately considered the effect of the child's placement with his father. We conclude that the trial court did not clearly err when it found that terminating Rogers's parental rights was in the child's best interests.

We affirm.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

/s/ Christopher M. Murray